

# **Finance and Administration Cabinet**

Office of Procurement Services

## **Personal Service Contracts Memorandum of Agreements**

Presented January 2011

Revised February 2011

# Finance and Administration

- FAC Secretary Jonathan Miller
- OPS Executive Director Don Speer
- PSC Administrator Kathy Robinson
- PSC Staff Cassandra Weiss

# Procurement Abuses

- Awards with no competitive process.
- Using sole source when competition exists.
- Declaring emergencies when none exist.
- Unduly restricting requirements to favor one vendor.

# KY Procurement Law

Model Procurement Code (MPC)

Drafted by ABA as a result of numerous public purchasing scandals. Establishes a set of ethical standards. Became law in 1979.

KRS 45A – statutory location of MPC

# **KRS 45A.010**

## **Purposes and Policies**

- (d) To provide for increased public confidence in the procedures followed in public procurement;
- (e) To insure the fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth;
- (f) To provide increased economy in state procurement activities by fostering effective competition; and
- (g) To provide safeguards for the maintenance of a procurement system of quality and integrity

# PSCs and MOAs

KRS 45A.690 – KRS 45A.725

KRS 45A.990 – Penalties

- (4) Any willful violation of KRS 45A.690 to 45A.725 shall be a Class A misdemeanor.

# PSCs and MOAs

FAP 111-43-00 (PSC)

FAP 111-44-00 (MOA)

200 KAR 5:307

200 KAR 5:309

# **GCRC**

## **45A.705 Government Contract Review Committee**

(1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee.



# GCRC

## Who Are They?

Senator Vernie McGaha Co-Chair  
Representative Dennis Horlander Co-Chair  
Sen. Julian Carroll    Rep. Brad Montell  
Sen. Carroll Gibson    Rep. Brent Yonts  
Sen. Paul Hornback    Rep. Jesse Crenshaw

Staff:	Kim Eisner	<a href="mailto:kim.eisner@lrc.ky.gov">kim.eisner@lrc.ky.gov</a>
	Matt Ross	<a href="mailto:matt.ross@lrc.ky.gov">matt.ross@lrc.ky.gov</a>
	Rebecca Brooker	<a href="mailto:rebecca.brooker@lrc.ky.gov">rebecca.brooker@lrc.ky.gov</a>

# **GCRC**

## **What Contracts Are Reviewed ?**

(4) All proposed personal service contracts, tax incentive agreements, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:

# GCRC

## What Do They Review ?

- a) Examine the stated need for the service or benefit to the Commonwealth of the motion picture or entertainment production;
- b) Examine whether the service could or should be performed by state personnel, for personal service contracts and memoranda of agreement;
- c) Examine the amount and duration of the contract or agreement; and
- d) Examine the appropriateness of any exchange of resources or responsibilities.

# GCRC Policies

- Policy Statement #98-1 Hourly Rate v. Travel Expense Policy
- Policy Statement #99-1 Legal Services: Duties and Maximum Rate Schedule
- Policy Statement #99-2 Appraisal Services: Duties and Maximum Rate Schedule
- Policy Statement #99-3 Auctioneer Services: Duties and Maximum Rate Schedule
- Policy Statement #99-4 Multiyear Government Contracts
- Policy Statement #99-5 Auditing Services; Duties and Maximum Rate Schedule
- Policy Statement #00-6 Personal Service Contract Amendment Policy

# GCRC Exemptions

- Exempt from routine review by statute or;
- Granted by GCRC upon request by agency.
- Exempt from 2-yr Biennial restriction by statute or;
- Granted by GCRC upon request by agency.

# **GCRC**

## **Exemption Requests**

Letter from the Agency head addressed to the Co-Chairs and mailed to Committee Staff.

Agency must be present at GCRC meeting to discuss the request.

# PSC Definition

KRS 45A.690(g) "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount

# MOA Definition

**KRS 45A.690(1)(d)** .....any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement.....privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function.



# Important PSC Information

- Must go through competitive process unless prior exemption approved by FAC.
- Must be filed with GCRC prior to the effective date.
- No work can be done until filed with GCRC.
- May not extend past the end of the biennium in which it is created.

# Important MOA Information

- Not required to go through a competitive process.
- Must be filed with GCRC prior to the effective date.
- No work can be done until filed with GCRC.
- May not extend past the end of the biennium in which it is created.

# PSCs/MOAs and eMARS

PSC's and MOA's are PON2's  
Proof Of Necessity

*Unless exempt from filing with*  
*GCRC* – PO2's

# **Executive Order 2008-01**

## **Letter of Intent**

Approval of an EO1/LOI  
must be obtained prior to  
the PSC contracting  
process.

# EO1/LOI

EO1's for PSC's less than \$10,000 and MOA's less than \$25,000 are reviewed and approved at the agency level.

Agency shall file a LOI for PSC's equal to or greater than \$10,000 with the FAC.

EO1's for MOA's equal to or greater than \$25,000 are reviewed by the EO1 Committee.

# LOI Purpose and Justification

Must contain:

- Description of Needed Service.
- Why service cannot be provided by a state agency.
- Estimate of work involved.
- Estimate of contract cost per year – including anticipated amendments.
- Contact person if other than the requestor

# LOI Purpose and Justification

All required information must be included. If additional space is needed, agency shall include additional information in a Word document attached to the header. Enter as much information as possible in the "Purpose and Justification" field and add, "Additional information attached at the Header."

# LOI Purpose and Justification

- LOI shall be filed with FAC no less than two (2) weeks prior to the intended RFP issue date.
- Select "Personal Service Contract" from the "type of request" drop down list to route to OPS.
- The LOI will be reviewed and final approval given by FAC



# PSC/MOA Process

- Agency creates RFP – not applicable for MOAs.
- All RFPs for PSCs, including those less than \$10,000, shall be submitted to OPS for review before issuance, other than A&E.

# PSC/MOA Process RFP

Agencies shall make cost the primary evaluation factor in the awarding of the contract, **whenever appropriate**. The scoring criteria shall be communicated to the prospective offerors in the RFP.

# PSC/MOA Process RFP

The RFP shall be submitted at least 7 days prior to the intended RFP “let date” (published date), and a “close date” a minimum of 7 calendar days after the “let date”.

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# PSC/MOA Process RFP

- The agency shall enter the approved EO1/LOI document number in the document comments. **DO NOT** attach an EO1 to the RFP header.
- Upon approval by OPS the RFP will be posted to the Vendor Self Service website

# PSC/MOA Process

Upon completion of RFP process, the Agency awards contract in eMARS on a PON2, prints **and obtains vendor and agency signatures**, submits to FAC via eMARS.

# PSC/MOA Process

FAC requires three (3) levels of review and approval

1. Validate
2. Legal
- 3: Secretary – KRS 45A.045(2)

*EEO approval required if greater than \$500,000*

# PSC/MOA Process

Filed with GCRC electronically  
PSC's and MOA's in **Final**  
phase by the last business  
day of the month are placed  
on the GCRC meeting agenda  
for the following month.

# GCRC Disapproval

If disapproved:

- Contract activity must stop immediately
- Agency may request an override by the FAC Secretary (written) KRS45A.705
- FAC Secretary must notify GCRC of any action taken within 10 days from date of review by the GCRC



# Required Terms and Conditions

- Scope of Work
- Period of Performance
- Pricing

# Required Terms

- Campaign Finance 45A.110(2)  
45A.115
- Violations of KRS 45A.485
- Access to Records 200 KAR 5:314;  
45A.150
- Payment Language 45A.695(7)
- Cancellation Clause 45A.695(1)
- Invoicing of PSCs 45A.695
- Preference 45A 494 (RFP only)

# Required Terms

- Funding Out Provision
- Authorized to do Business in KY  
(not required for MOAs with governmental entities)
- Reduction in Contract Worker Hours

# Required Attachments

- Approved EO1/LOI - pdf version, not a screenshot
- Required Affidavit for Bidders or Offerors – signed and notarized  
(Affidavit is not required for MOA's with governmental entities)

# PSC Templates

- RFP and PSC Templates are available online for agencies use.
- Agencies are not required to use them.
- Templates contain all required terms and conditions and signature lines.

# **Standard Terms and Conditions**

Standard boilerplate PSC and MOA terms and conditions are loaded in eMARS and may be incorporated into the assembled PON2.

# Competitive Exemption Requests

- Competitive Exemption Requests will be reviewed at the same time as the LOI.
- Agencies shall enter exemption request information in the “For Agency Use” field of the LOI.

# Competitive Exemption Requests

- **Competitive Exemption Requests include:**
  - Sole source;
  - Not practicable or feasible to bid;
  - Renewals;
  - Time and Balance extensions



# Competitive Exemption Requests

Shall include the following in the "For Agency Use Field"

- Vendor Name
- –Contract Service Dates
- –Contract Amount per year including anticipated amendments

AND.....

# Competitive Exemption Requests

- **Sole Source**-Justification for the sole source;
- **Not Practicable or Feasible**-Explanation why bidding is not feasible;
- **Renewal**—Current contract number, language from original RFP allowing renewals.
- **Time and Balance Extension**—Explanation why the contract must be extended beyond the original expiration date.

# Start Date Requests

PON2's are required by statute to be filed with the GCRC PRIOR to the effective date. Statutes allow for an emergency start date request for Personal Service Contracts – **NOT** Memorandum of Agreements. Emergency or Retroactive start dates are **NOT** permitted for MOAs.

# **Emergency Start Date Request PSC's Only**

45A.096 – "emergency condition.....  
would seriously threaten the  
functioning of government, the  
preservation or protection of property,  
or the health or safety of any person"

# **Retroactive Start Date Request PSC's Only**

- Required when an agency allows a vendor to begin work prior to the filing of the PSC with the GCRC even though an emergency condition did not exist.
- Closely scrutinized by GCRC staff.

# Start Date Requests

- Start Date Requests will be reviewed at the same time as the LOI.
- Agencies shall enter start date request information in the “For Agency Use” field of the LOI
  - Emergency Start Date
  - Retro-Active Start Date

# Start Date Requests

**Shall include the following:**

- Vendor Name**
- Contract Service Dates**
- Contract Amount per year including anticipated amendments**
- An explanation as to why the vendor was allowed to provide services prior to the contract being filed with the LRC GCRC**

# Competitive Exemption and Start Date Disapprovals

If the LOI is approved and the competitive bidding exemption or start date request is not approved, the agency will be notified to modify the E01 removing the request for competitive exemption or start date request



# Competitive Exemption and Start Date Approvals

PON2's with FAC approved Competitive Exemption or Start dates shall identify the contract as a sole source, not practicable or feasible, emergency or retroactive start date, renewal or time and balance extensions. This information needs to be the first entry in the "Description of Work to be Performed" field on the PON.

# PON – Description of Work to be Performed

http://kyemarsnp.state.ky.us/ - AMS Advantage - Windows Internet Explorer

AMSADVANTAGE

Welcome, Rose Caudle

Procurement Accounts Payable Accounts Receivable Budget Cost Accounting

PON2 758 1100000004 1

**Document View**

- ✓ Header
- Vendor
- Business Type
- Sub Vendor
- Accounting Distribution
- Terms and Conditions
- Special Instructions
- Commodity
- Commodity T & C
- Accounting
- Posting
- Supporting Documents
- ✓ Proof of Necessity
  - General Information
  - Source of Funds
  - Contract Cost Information
  - Justification
  - Contact Information
- Document Comments

PON2 - 758- 1100000004- 1- New- Draft

Action Menu

Load T and C Ship/Bill To Lines

Select Line

First Prev Go To Next Last

▼General Information

Type of Award : New

Description of Work to be Performed :

Planned Performance Monitoring Activities :

SOLE SOURCE  
NOT PRACTICABLE OR FEASIBLE  
TIME AND BALANCE EXTENSION  
START DATE

# Legal Service PSCs

- Approval by the Governor's General Counsel prior to the EO1/LOI
- Electronic approval by Governor's General Counsel office after FAC approval and prior to filing with GCRC
- GCRC Policy 99-1 Maximum Rates apply

# Auditing Services PSCs

- APA letter declining to perform the audit must be attached to PON2
- GCRC Policy 99-5 Maximum Rates apply

# PSC/MOA Modifications

- Must be created in eMARS
- **New signatures required**
- Reason for Modification must be brief and clearly stated.
- If increasing/decreasing funds, previous contract amount, amount of mod and new contract total must be provided in Reason for Modification

# **PSC/MOA**

## **Administrative Modifications**

- Changes that do not affect the contract, such as an accounting code.
- New signatures are not required.
- Reason for Modification must clearly identify: ADMINISTRATIVE MOD ONLY. No increase/decrease in funds. No change in scope.

# PON

## Proof of Necessity

- Define acronyms
- Identify "Other" source of funds
- Description of Work should be brief and clearly stated and must include Exemption or Start Date Request Identification (if applicable)
- Provide court case number (if applicable)
- Provide EV number (if applicable)
- Provide name/address of other providers considered- if none, explain why not
- Provide hourly rates for legal and auditing
- Provide SOS Org # (if applicable)
- Provide agency contact name and number

# University Agreements

## KRS 45A.690(1)(d)

*"Memorandum of agreement" .....*  
definition does not apply to:

4. "Agreements between state agencies and state universities or colleges only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired, ....."



# University Agreements

This means –

Agreements between state agencies and public institutions of higher education where an employee or employees of the institution are performing or will perform duties that an employee or employees of state government could perform if hired are to be established as MOA's that will be filed with the LRC GCRC

# University Agreement Exemption Request

If a state agency believes that the Agreement with a public University is still exempt pursuant to KRS 45A.690(1)(d)(4), the agency shall request an exemption from the FAC Secretary prior to the execution of the contract . Request should be submitted by email to OPS Executive Director, through OPS PSC Administrator.

# University Agreement Reminders

- Only applies to public universities or colleges, not private
- University agreements not exempt from the definition of a MOA are created as PON2 MOA's in eMARS. Retroactive dates are not allowed.
- University agreements approved by OPS as exempt from the definition of a MOA under KRS 45A.690(1)(d)4 are created as PO2 documents in eMARS.
  - eMARS Procurement type is 14.
  - Cited authority is KRS 45A.690(1)(d)4

# Questions??

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